

Docket No: 04-0469
ROM: 11/23/04
Deadline: 12/01/04

MEMORANDUM

TO: The Commission

FROM: Ian Brodsky and Glennon P. Dolan,
Administrative Law Judges

DATE: November 10, 2004

SUBJECT: MCI Metro Access Transmission Services, Inc.,
MCI WorldCom Communications, Inc.,
Intermedia Communications, Inc.

Verified Petition for Arbitration of Interconnection Rates,
Terms and Conditions and Related Arrangements with
Illinois Bell Telephone Company (SBC Illinois) pursuant to
Section 252(b) of the Telecommunications Act of 1996.

RECOMMENDATION: Enter the attached Post Exceptions Proposed Arbitration
Decision ("PEPAD").

This proceeding was initiated by a Petition for Arbitration ("Petition") filed with the Commission on July 16, 2004, by MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc. (collectively "MCI"), pursuant to Section 252(b) of the Telecommunications Act of 1996, 47 U.S.C. § 251, *et seq.* ("1996 Act" or "TA96") and 83 Ill. Adm. Code 761. The Petition seeks resolution by the Commission of approximately 304 disputed issues with Illinois Bell Telephone Company (SBC Illinois) ("SBC") in connection with the negotiation of an interconnection agreement ("ICA"). SBC filed its Response to MCI's Petition on August 10, 2004.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, hearings were held on July 21, 2004, and September 14, 2004. MCI, SBC and Staff appeared. The parties waived cross-examination on all issues presented for arbitration. At the conclusion of the latter hearing, the matter was marked "Heard and Taken."

Initial and Reply Briefs were filed from September 20, 2004, to October 1, 2004, by MCI, SBC and Staff. The Proposed Arbitration Decision was served the parties and Commissioners on October 29, 2004. MCI, SBC and Staff filed Briefs on Exceptions on November 5, 2004. The parties filed exceptions on the following issues:

SBC: GT&C issues 8/9, 10, 11, 14; Invoicing 7; NIM 31 and 33; OSS 1; Pricing 15 and 36; RC 15, 23, 25; and UNE 2, 9, 11, 12, 18/23, 19, 32, 35, 54, 71/72, SBC UNE 5.

MCI: GT&C 8; Def 2; NIM 9, 14, 16/18, 17/24, 19, 20, 25, 28, 31, 32; Pricing 34, 39; RC 1, 5, 8, 18, 19, 20; Resale 1; UNE 2, 5, 14, 19, 20, 25, 30, 38, 71, SBC UNE 1, SBC UNE 5; xDSL 6.

Staff: NIM 9, 16, and 19; RC 25; and UNE 2, 18, and SBC UNE 5.

The deadline for Commission action is December 1, 2004.

Main issues

Time constraints require us to limit our discussion of the issues; however, we address a few main issues below.

As discussed in Section III, the parties have a duty to negotiate in good faith. The Order sets forth a rebuttable presumption that good faith negotiation occurred if either of two conditions are met. If neither is met, any other factors can be offered to demonstrate good faith. On exceptions, the carriers offered some new facts as to their prior negotiations.

A number of issues were rendered moot by the FCC's "*Status Quo Order*," as discussed in Section IV of the Order.

Line Sharing and Line Splitting: No exceptions were filed concerning the conclusions of these issues. However, in an attempt to clarify the parties' obligations and positions in these areas, some changes were made. The ultimate outcome of each issue remained the same.

RC 12-13: These issues concern growth caps for ISP-bound traffic. On exceptions, MCI noted that the very recent "Core Forbearance Order" provides that growth caps are no longer in the public interest. The conclusions for these issues have been revised to be consistent with that Order.

UNEs 2, 9, 11 & 12: All of these issues deal with declassification of UNEs. In the analysis and conclusions of these issues, the language is an attempt to deal with SBC's current and future obligations under Section 251, Section 271 and PUA Section 13-801.

Non-arbitrability arguments (NIM 31 et al): SBC periodically argues that certain issues, such as transiting, are not Section 251 services, and therefore are not subject to arbitration under Section 252. Consistent with *Coserv v. Southwestern Bell*, 350 F.3d 482 (5th Cir. 2003), the attached Order finds that the issues are arbitrable where they were the subject of negotiations for this ICA.

IB/GD:fs